

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

TODD COPENHAVER and AMBER  
COPENHAVER,

Plaintiffs,

vs.

CAVAGNA GROUP S.p.A. OMECA  
DIVISION, et al.,

Defendants.

CV 19-71-BLG-SPW-TJC

**ORDER**

Before the Court is Plaintiffs' Notice of Dismissal Without Prejudice of Claims Against Ningbo Wanan Co., LTD, and Runnings Supply, Inc., d/b/a Runnings, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii). (Doc. 68.) The Court notes that Plaintiffs failed to adhere to Rule 41(a)(1)(A)(ii), which permits voluntary dismissal by the plaintiff without a court order by filing:

(ii) a stipulation of dismissal signed by all parties who have appeared.

Here, Plaintiffs' aver that "[a]ll parties have stipulated in writing via email to the dismissal," but the motion is only signed by Counsel for Plaintiffs, John Morrison. *See Morris v. City of Hobart*, 39 F.3d 1105, 1109 (10th Cir. 1994) ("The document that plaintiff filed on September 30, 1987—entitled 'Dismissal with Prejudice'—was not a Rule 41(a)(1)(ii) stipulation because it was signed only by plaintiff."); *Carter v. Beverly Hills Sav. & Loan Ass'n*, 884 F.2d 1186, 1191 (9th Cir. 1989) ("Rule 41(a)(1)[A](ii) allows the parties to dismiss an action

voluntarily after service of an answer by filing a written stipulation to dismiss, signed by all of the parties.”); *Wheeler v. American Home Products Corp. (Boyle–Midway Div.)*, 582 F.2d 891, 896 (5th Cir.1977) (Rule 41(a)(1) “did not authorize dismissal as against intervenors because the stipulation (settlement agreement) was not signed by ‘all parties.’”). Thus, Plaintiffs must refile with all parties’ signatures.

The Court further notes that Defendant Ningbo Wanan Co., LTD, has not filed an answer to the Second Amended Complaint (Doc. 42), while Runnings answered to the Third Amended Complaint. (*See* Docs. 48 &59.) Rule 41(a)(1)(A)(i) permits voluntary dismissal by a plaintiff without a court order “by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” Thus, Plaintiffs may refile a notice under Rule 41(a)(1)(A)(i) as to Defendant Ningbo Wanan Co., LTD, without the opposing party’s signature.

Compliance with Rule 41(a)(1) is required. Accordingly,

**IT IS ORDERED** that Plaintiffs’ Notice of Withdrawal is **REJECTED** with leave to renew.

DATED this 28th day of April, 2020.

  
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TIMOTHY J. CAVAN  
United States Magistrate Judge